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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Petitioner

v.

UNITED STATES OF AMERICA and
CONSOLIDATED RAIL CORPORATION,
Respondents.

On Petition for a Writ of Certiorari to the Special Court Regional Rail Reorganization Act of 1973

BRIEF OF RESPONDENT CONSOLIDATED RAIL CORPORATION IN OPPOSITION

DENNIS ALAN AROUCA
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19104
(215) 977-4999
Counsel for Consolidated Rail Corporation

HARRY A. RISSETTO
Counsel of Record
THOMAS E. REINERT, JR.
MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036
(202) 872-5000

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QUESTIONS PRESENTED

1. Did Congress intend by enacting Title V of the Regional Rail Reorganization Act of 1973 to enter a contract between the United States and railway employees, which was impaired in violation of the Fifth Amendment to the Constitution when Congress repealed Title V with the Northeast Rail Service Act of 1981.

2. Whether the Special Court, Regional Rail Reorganization Act of 1973, correctly interpreted the Northeast Rail Service Act of 1981 to supersede inconsistent collective bargaining agreements that require Conrail to pay employee protection benefits according to the repealed provisions of Title V.

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BRIEF OF RESPONDENT CONSOLIDATED RAIL CORPORATION IN OPPOSITION

Respondent, Consolidated Rail Corporation (hereinafter "Conrail") respectfully requests that the Petition for a Writ of Certiorari of Petitioner Railway Labor Executives' Association (hereinafter "RLEA") to review the judgment of the Special Court, Regional Rail Reorganization Act of 1973, entered on December 23, 1983 in Case No. 82-11, be denied.

OPINIONS BELOW, JURISDICTION AND CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Opinions Below, Jurisdiction, and Constitutional And Statutory Provisions Involved are adequately set forth in the Petition for a Writ of Certiorari.[1]

STATEMENT OF THE CASE

This case is one of a series of constitutional challenges to the employee protection provisions of the Regional Rail Reorganization Act of 1973 (hereinafter "3R Act"), as amended, Pub. L. No. 93-236, 87 Stat. 985, 45 U.S.C. § 701 *et seq.* (1976).[2] At issue is the special labor protection program applicable to many Conrail employees and originally enacted as Title V of the 3R Act. Petitioner, an association of railway labor unions, asserts that Title V constituted a contract between the United States and railway labor that was unconstitutionally impaired

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[1] The Respondent also incorporates by reference the Petition's Appendix, which includes the Memorandum Opinion of the Special Court, filed December 19, 1983, for which review is sought.

[2] In *Hinds v. Consolidated Rail Corp.*, 518 F. Supp. 1350 (Sp.Ct.R.R.R.A. 1981), *cert. denied*, 454 U.S. 1145 (1982), the Special Court rejected an equal protection challenge to amendments to the Title V protections enacted by the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980). *United Transportation Union v. Consolidated Rail Corp. (Cannon)*, 535 F. Supp. 697 (Sp.Ct.R.R.R.A. 1982), *cert. denied sub nom. Cannon v. Consolidated Rail Corp.*, 102 S.Ct. 2960 (1983) presented a due process challenge to the Section 702 separation program of the Northeast Rail Service Act of 1981, Subtitle E of Title XI of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 643 (1981), which similarily was found to be meritless.

by the repeal of Title V under Section 1144 of the Northeast Rail Service Act of 1981 (hereinafter "NRSA"), Subtitle E of Title XI of the Omnibus Budget Reconciliation of Act of 1981, Pub. L. No. 97-35, 95 Stat. 643 (1981). Petitioner also maintains that by repealing Title V Congress did not intend to supersede inconsistent protective provisions contained in collective bargaining agreements.

Title V was enacted in 1973 with the legislative purpose of lessening the impact of reorganization on the employees of the predecessor bankrupt railroads whose assets were conveyed to form Conrail. The program provided displacement, separation, termination and moving expense allowances for protected employees. Congress initially authorized $250 million for Title V benefits, with the expectation that these federal funds would sustain the program until the year 2021, when the last covered employee would be eligible for retirement. In Judge Wisdom's words, this was a "monumental miscalculation;" for the actual costs of the program far exceeded the projections, and the $250 million authorization was exhausted in 1980, 40 years prematurely. *Hinds, supra* note 2 at 1354. With the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980), Congress addressed the labor protection problem by narrowing the circumstances that entitled employees to benefits, authorizing an additional $235 million in funding, and specifying that labor protection costs in excess of this additional funding would be borne by Conrail. *See Hinds.* Nonetheless, the Title V program remained prohibitively expensive.

In 1981, Congress concluded that preserving Northeast rail service and returning Conrail to the private sector required more fundamental legislative action,

and enacted the Northeast Rail Service Act.[3] Addressing labor protection, Congress found that the Title V provisions had "resulted in the payment of benefits far in excess of levels anticipated at the time of enactment, have imposed an excessive fiscal burden on the Federal taxpayer, and are now an obstacle to the establishment of improved rail service and continued rail employment in the Northeast region . . ." NRSA, Sec. 1132(4) . With NRSA, Congress repealed Title V and substituted an affordable employee protection program. Pursuant to new Section 701, added by NRSA Section 1143, protected employees are eligible for benefits up to $20,000 under a schedule promulgated by the Secretary of Labor. Congress also authorized an additional $250 million to fund the Section 701 program. 95 Stat. 668.

The decision below by the Special Court, Regional Rail Reorganization Act of 1973, arose from Petitioner's two-sided challenge to the repeal of Title V under Section 1144 of NRSA, and its implementation by Conrail. Petitioner in Count I of the Complaint claimed that Title V was "bargained" legislation which could not be repealed consistent with the Due Process Clause of the Fifth Amendment. Adjudicating the case on stipulated facts, the Special Court rejected Petitioner's theory that Title V was a contract. Rather, the Court held, as it had pre-

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[3] Conrail has achieved profitability, and pursuant to NRSA the Secretary of Transportation is currently engaged in the process of soliciting proposals for sale of the railroad to the private sector. 130 Cong. Rec. E. 238-9 (Daily ed. Feb. 1, 1984). The RLEA, on behalf of its employee members, made a formal proposal for the purchase of Conrail to the Secretary of Transportation of June 14, 1983. N.Y. Times, June 15, 1983, at A1, col. 1.

viously held in *Hinds*, that Title V was social welfare legislation, and could, therefore, be repealed constitutionally. In Count II, Petitioner alleged that Title V benefits were contractual because of their incorporation in a collective bargaining agreement between Conrail and the Brotherhood of Railway and Airline Clerks (hereinafter "BRAC"), and that Conrail violated the Railway Labor Act by refusing to pay Title V benefits after their repeal. In rejecting this latter claim, the Special Court interpreted the NRSA repeal of Title V as superseding any inconsistent contractual obligation to pay Title V benefits.

REASONS FOR DENYING THE WRIT

I. The Special Court Correctly Held That Title V Of The 3R Act Was Not A Contract.

Petitioner's due process challenge to the repeal of Title V does not present a special or important constitutional question, *see* Sup. Ct. R. 17.1, but rather, a narrow issue of interpretation of legislative purpose. The gravamen of Petitioner's claim is that by enacting Title V, Congress entered a contract with railway labor that was constitutionally immune from subsequent repeal. In rejecting Petitioner's theory, the Special Court applied the standards for distinguishing statutory contracts that have been articulated by this Court, and utilized traditional techniques of statutory interpretation. The Special Court's holding that Title V was a noncontractual social welfare program is a reiteration of its decision in *Hinds*, which this Court previously declined to review.[4]

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[4] Petitioner asserts that the Special Court erroneously relied on its prior finding in *Hinds* that Title V was a noncontractual

In reaching its decision, the Special Court followed this Court's precedent which hold that statutory contracts will only be found when there is clear evidence of legislative intent. *See United States Trust Co. v. New Jersey*, 431 U.S. 1, 17-18 (1977); *F.H.A. v. Darlington, Inc.*, 358 U.S. 84, 91 (1958); *Perry v. United States*, 294 U.S. 330, 348 (1935). As Petitioner admits, Title V does not expressly purport to create contractual rights. Pet. 18. The Special Court found no statement in the legislative history that indicated Congressional intent to create a contract. Pet. 90a-91a. Petitioner cites no legislative reports or statements by individual legislators that contradict this finding. At most, Petitioner quotes testimony to Congress that indicates legislative awareness of pre-consolidation collectively bargained rights to labor protection. Pet. 91a. Ultimately, Petitioner relies on the political and historical context of the enactment of Title V to argue that employees had a legal and moral right to labor protection. Pet. 9. But the Special Court correctly concluded that the political context of the enactment of Title V is insufficient to create a statutory contract. Pet. 91a-92a. *See Hinds*, 518 F. Supp. at 1352 n.2; *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 575, 585 (1979). Because Title V was social welfare legislation and not a contract, its repeal did not violate the Fifth Amendment. *See United States Railroad Retirement Board v. Fritz*, 449 U.S. 166 (1980); *Flemming v. Nestor*, 363 U.S. 603 (1960).

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social welfare program. Pet. 19. Despite Petitioner's protestations, the *Hinds* holding "was not dicta", for "the finding that Title V was social welfare legislation was necessary to the Court's decision to apply minimal scrutiny analysis." Pet. 91a. Nonetheless, the Court below reconsidered the issue based upon Petitioner's arguments. *Id.*

The Court should not review the Special Court's constitutional decision, which is based entirely on an interpretative finding that Title V was noncontractual social welfare legislation. The Special Court was originally established by Congress to exercise exclusive jurisdiction over certain specific matters arising out of the implementation of the 3R Act, as amended, and that jurisdiction was extended by Section 1152 of NRSA. Because the Special Court has original and exclusive jurisdiction over the dispute, its decision does not and cannot conflict with the decision of another federal or state court. The Special Court has a unique familiarity with the 3R Act, as amended, and its interpretation of the Act's legislative purposes is entitled to weight, particularly concerning an issue it has previously adjudicated. The interpretation of Title V of the 3R Act, although of significance to the parties in this litigation, does not involve an important question of federal law which has not been but should be settled by this Court. Petitioner has failed to demonstrate any special or important reasons for granting certiorari to review the Special Court's decision that the repeal of Title V was constitutional.

II. The Decision Below Properly Interpreted The Repeal Of Title V Of The 3R Act As Superseding Inconsistent Contractual Provisions.

The Special Court also rejected Petitioner's alternative, nonconstitutional challenge to Conrail's implementation of the labor protective provisions of NRSA. Petitioner argued below that Conrail has a continuing obligation under the Railway Labor Act to pay Title V benefits to BRAC-represented employees, despite the provision's repeal, because Title V allegedly was incorporated into the Conrail-BRAC collective

bargaining agreement. Pretermitting the question whether any such contractual obligation existed, the Special Court held that by repealing Title V Congress intended to supersede any inconsistent contractual obligations to pay Title V benefits.

The Special Court's decision concerning the supersessive effect of Section 1144 of NRSA is firmly based in the legislative record. NRSA repealed Title V and expressly substituted a new program of benefits under Section 701. An explicit purpose of the Act was to remove liability for employee protection from Conrail. NRSA, Sec. 1132(5). As the Court noted, Pet. 94a, the Conference Report accompanying the bill that became NRSA stated:

> [T]he benefits under this section are intended to replace the benefits provided under Title V of the RRR Act. This is the exclusive protection for employees, and any employee protection contained in collective bargaining agreements is replaced by this protection.

127 Cong. Rec. S. 9060 (Daily ed. July 31, 1981).

Petitioner's characterization of the Special Court's opinion as supporting "repeal by implication" is simply inapposite. Pet. 23. NRSA expressly repealed Title V and Congress expressly stated its intent to supersede inconsistent contractual obligations. As the Special Court had previously held in *Cannon*, *supra* note 2, Congress had the power in enacting NRSA to override inconsistent collectively bargained provisions. *See Norman v. Baltimore & Ohio R. Co.*, 294 U.S. 240, 306-9 (1935); *Louisville & N.R.R. Co. v. Mottley (II)*, 219 U.S. 467, 482 (1911). Throughout the history of the 3R Act, Congress has played a special role in specifying Conrail's labor protection obli-

gations and restricting the scope of Conrail's bargaining under the Railway Labor Act concerning the issue. *See* 3R Act, § 504(d). By complying with the NRSA labor protection provisions, Conrail did not violate the Railway Labor Act.

The Special Court's interpretation of NRSA is based in the Court's expertise concerning the 3R Act, and should not be disturbed. The issue is not a special or important one, but rather, only of significance to employees covered by the Conrail-BRAC agreement. Petitioner offers no convincing reasons for reviewing the Special Court's decision, which is clearly without error.

CONCLUSION

For the foregoing reasons, Respondent Consolidated Rail Corporation respectfully submits that the Petition for Writ of Certiorari to the Special Court, Regional Rail Reorganization Act of 1973 should be denied.

Respectfully submitted,

DENNIS ALAN AROUCA
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19104
(215) 977-4999
Counsel for Consolidated Rail Corporation

HARRY A. RISSETTO
Counsel of Record
THOMAS E. REINERT, JR.
MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036
(202) 872-5000

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